The Transportation Law Bureau (Bureau) acts as legal counsel for the New Hampshire Department of Transportation (NHDOT). The Bureau represents the NHDOT in eminent domain, real estate, contract, construction, administrative, personnel and personal injury cases related to the State's transportation systems and public works projects. The Bureau provides the NHDOT with general legal advice on a broad range of transactions and civil proceedings. Its role encompasses a wide range of trial and appellate advocacy in state and federal courts, as well as administrative law before a variety of boards. The legal workload generated by the breadth of the NHDOT's responsibilities resulted in 325 new files being opened by the Bureau during the two-year period. At the same time, the Bureau resolved 239 matters. The Bureau performed legal roles in major projects, including the Conway Bypass, Keene Bypass, Manchester Airport Access Road, the Granite Street Extension, the implementation of E-ZPass, and the I-93 Expansion Project, as well as a multitude of smaller projects throughout the State.

Eminent Domain

Land acquisitions continue to be a central function of the Bureau. Prior to condemnation, the Bureau routinely advises the NHDOT on land title issues, document preparation and legal issues effecting the proper valuation for the acquisition of property necessary for transportation improvements. After the initiation of eminent domain proceedings, the Bureau represents the State during the litigation striving to reach a fair and equitable resolution to the takings. The eminent domain process remains an essential tool in completing the public projects necessary to improve the safety and efficiency of the State's transportation network. During the last biennium, an additional 70 new eminent domain cases were opened and 51 were resolved.

Although the number of condemnation actions has remained relatively stable for the last two bienniums, that belies the increasing complexity of the State's acquisitions. For example, this biennium saw the State acquire an entire timeshare condominium complex, Cranmore Place Condominiums, the first eminent domain action of its kind in the nation. Because 11 condominium units at Cranmore Place were broken into 52 separate weeks of ownership, more than 550 separate unit owners interests had to be acquired. This presented groundbreaking challenges in title research, document drafting and valuation. With the acquisition now complete, substantial valuation issues remain to be resolved. Because no other state has acquired a timeshare complex, each issue has presented new challenges that no other jurisdiction has yet confronted.

The State continues to acquire many contaminated properties which also pose unique legal issues. The State's past approach of treating the properties as clean and attempting to recoup the cleanup costs later has long proved unsatisfactory. With the Bureau's encouragement, the State now values the contaminated properties as an ordinary buyer would and is paying appropriate fair market value for the parcel in its actual contaminated condition. This process prevents owners of contaminated land from receiving windfalls and leaving the public with the bills for the owner's past misdeeds.

The I-93 Project presents challenges with extraordinarily high commercial valuations and complex development analysis affecting the properties being acquired. These factors have required the Bureau's involvement earlier in the acquisition process than normal for several high value properties.

Recently, the New Hampshire Supreme Court decided a significant eminent domain case in *State v. Daly, et al*. Landowners in Conway had sought compensation from the State through the eminent domain process for damages that allegedly occurred to their property when the Town enacted new zoning ordinances in response to the State's proposed Conway Bypass Project. The Supreme Court dismissed the condemnees' claims against the State holding that the damages sought were caused by the Town of Conway, not the State. Therefore, any compensation had to be addressed through the local zoning process. An adverse decision would have dramatically increased the Project's costs by tens of millions of dollars.

Environmental and Legal Challenges to Major Projects

The State's transportation improvement projects have encountered diverse legal challenges, which threaten their completion. A concerted effort by a few abutters along the Route 16 commercial strip in Conway, New Hampshire, which endangered completion of Phase 5A of the Conway Bypass Project, was defeated in a recent Supreme Court decision. Environmental challenges to transportation improvement projects continued throughout the biennium, with more anticipated. The Conservation Law Foundation (CLF) filed actions against the

State wetland permits for the Keene-Swanzey and Troy Bypasses. The Bureau successfully defended both projects, though each has subsequently been scaled back due to other considerations. The Manchester Airport Access Road has received its final approvals and legal challenges were withdrawn.

The legal issues related to the environmental permitting for the I-93 Expansion Project have occupied significant Bureau time as the project nears its final federal approvals. Significant attorney time has been spent reviewing and preparing the appropriate legal documents to meet the federal requirements for permitting. A lawsuit challenging the I-93 approvals under the National Environmental Policy Act and the Clean Water Act is anticipated in the coming months.

Aeronautics, Rail and Transit

Rail and transit projects also took on renewed focus. The last two years saw continued expansion and improvement of multimodal facilities in Concord and Portsmouth, as well as the proposed expansion of passenger rail service to Nashua. The latter project suffered a significant, if not wholly unanticipated, setback when the Supreme Court ruled in *NHMTA v. State*, 150 N.H. 762 (2004), that highway funds could not be expended on rail projects. The multimodal projects have fostered a host of legal issues involving leases, funding, environmental documentation and property acquisition.

Several actions have also raised issues regarding the legality of the State's use of unused rail corridors for recreational trails. For example, in *Appalachian Mountain Club v. NHDOT, et al.*, an environmental group has challenged the proposed use of a rail corridor for a snowmobile trail. While this case is nearing a mutually satisfactory conclusion, other pending cases also raise the issue. The outcome of these actions may have significant long term ramifications to the State's desire to preserve railroad corridors and its trail system.

Personal Injury and Property Damage Claims

Tort claims handled by the Bureau encompass a variety of claims of death, personal injury and property damage allegedly caused by the negligent design, construction or maintenance of the State's transportation system. In the last biennium, the Bureau faced 105 tort claims, a slight increase over the previous biennium's 83. A total of $38,932 was awarded against the NHDOT and settlements totaling $90,690 were paid out during the two-year period. Despite the increase in total claims, the resulting sum of $129,622 in payments to claimants represents a slight decrease from the total of $213,219 paid during the previous biennium.

Contract Law

The Bureau reviewed and approved over 480 State contracts and 205 leases during the recent two-year period. Many of these contracts were unique or highly complex in nature. Implementation of E-ZPass, for instance, required substantial legal work to complete the multi-state operating agreement so that it conformed to New Hampshire law. The bid preparation and award process required significant legal research. Several bid disputes arising from major construction projects were resolved without the need for litigation.

Human Resources

Human resources and employment law issues at NHDOT remain a significant source of activity. By being proactive early in the process with important personnel investigations, the Bureau has directly assisted the NHDOT in managing its risks in these types of cases and reducing its liability exposure. In the last biennium, approximately 27 claims of sexual harassment/ hostile work environment were made to NHDOT, with subsequent investigations monitored by the Bureau. The Bureau reviewed and oversaw approximately 200 to 212 issues involving discipline ranging from counselings, suspensions and demotions to terminations. The Bureau directly contributed to NHDOT's record of having all its employment actions sustained by the Personnel Appeals Board, and dismissal of every complaint brought before the Human Rights Commission in the last biennium.